

EIGHTH DAY.

Senate Chamber,
Austin, Texas,
January 23, 1933.

The Senate met at 10 o'clock a. m., pursuant to adjournment, and was called to order by President Pro Tem. Walter Woodul.

The roll was called, a quorum being present, the following Senators answering to their names:

Beck.	Oneal.
Blackert.	Pace.
Collie.	Parr.
Cousins.	Patton.
DeBerry.	Poage.
Duggan.	Purl.
Fellbaum.	Rawlings.
Greer.	Redditt.
Holbrook.	Regan.
Hopkins.	Russek.
Hornsby.	Sanderford.
Martin.	Small.
Moore.	Stone.
Murphy.	Woodruff.
Neal.	Woodul.

Absent—Excused.

Woodward.

Prayer by the Rev. Virgil Fisher, pastor of the First Methodist Church, Austin.

Pending the reading of the Journal of yesterday, the same was dispensed with on motion of Senator Stone.

Bills and Resolutions.

By Senator Holbrook:

S. B. No. 70, A bill to be entitled "An Act making an appropriation to be paid out of the General Revenue Fund of the State of Texas the sum of three thousand eight hundred and forty-three dollars (\$3,843), not otherwise appropriated, to cover taxes due by the State of Texas to the Sugarland Independent School District covering the years from 1928 to 1932, inclusive; and declaring an emergency."

Read and referred to Committee on Finance.

By Senator Holbrook:

S. B. No. 71, A bill to be entitled "An Act providing that the salaries of district judges, judges of the Courts of Civil Appeals, judges of the Courts of Criminal Appeals,

judges of the Supreme Court, judges of the Commissions of Appeals of both the Supreme Court and Court of Criminal Appeals, all other State officers, except the Attorney General and those whose salaries are fixed absolutely and specifically by the Constitution of this State, and all State employees shall, beginning with September 1, 1933, be such sums or amounts as may be provided by the Legislature in the general appropriation bills; repealing all laws in conflict herewith and declaring an emergency."

Read and referred to Committee on Finance.

By Senator Rawlings:

S. B. No. 72, A bill to be entitled "An Act to amend Section 9, Chapter 282, page 507, Acts of the Forty-second Legislature, Regular Session, by adding thereto a new section to be known as Section 9a, exempting from the requirements of chauffeur's license persons operating under driver's license issued under the provisions of Section 4b, Chapter 277, page 480, Acts of the Forty-second Legislature, Regular Session, and declaring an emergency."

Read and referred to Committee on State Highways and Motor Traffic.

By Senator Hopkins:

S. B. No. 73, A bill to be entitled "An Act to require all candidates for State, district, county and precinct offices in primary elections, in addition to the requirements now provided by law, to include in said request for place on primary ballot, a statement signed and acknowledged by the candidate, that the candidate supported and voted for all candidates of the party (naming the political party) at the next preceding general election in Texas."

Read and referred to Committee on Privileges and Elections.

By Senator Hopkins:

S. B. No. 74, A bill to be entitled "An Act amending Article 3110, Revised Statutes of Texas, providing official ballots for primary elections shall have no symbol or device or any printed matter, except a uniform primary test, stating the test and to be signed by the voter offering to vote the ballot, and providing that any ballot which shall not contain such printed test above the

names of the candidates on said ballot, and signed by the voter shall not be counted."

Read and referred to Committee on Privileges and Elections.

By Senator Hopkins:

S. B. No. 75, A bill to be entitled "An Act to regulate the occupation and practice of cosmetology; to create a State Board of Cosmetologists for the licensing of persons, firms, co-partnerships, associations or corporations to carry on and/or to teach such practice, to insure the better education of such practitioners; to provide rules regulating the proper conduct and sanitation of cosmetologists establishments and schools for the protection of the public health, and to provide penalties for violation thereof; etc., and declaring an emergency."

Read and referred to Committee on State Affairs.

By Senator Rawlings:

S. B. No. 76, A bill to be entitled "An Act relating to the installation, operation and use of short wave radio receiving sets in motor vehicles, prohibiting the installation and use thereof without a permit, except by bona fide peace officers, prescribing the penalty and declaring an emergency."

Read and referred to Committee on State Highways and Motor Traffic.

By Senator Rawlings:

S. B. No. 77, A bill to be entitled "An Act to amend Article 4145, Revised Civil Statutes, so as to provide that surviving guardians appointed by will may be exempt from bond for management of estate of minors."

Read and referred to Committee on Civil Jurisprudence.

By Senator Rawlings:

S. B. No. 78, A bill to be entitled "An Act to amend Section 13, Chapter 277, page 480, Acts of the Forty-second Legislature, Regular Session, providing that before a permit or certificate of public convenience and necessity may be issued to any motor carrier, or before any motor carrier may lawfully operate under such permit or certificate, such motor carrier shall file with the Commission bonds and insurance policies issued by companies authorized by law to transact business in Texas,

in an amount to be fixed by the Commission under such rules and regulations as it may prescribe; etc., and declaring an emergency."

Read and referred to Committee on State Highways and Motor Traffic.

By Senator Russek:

S. B. No. 79, A bill to be entitled "An Act to amend Article 1093 of the Revised Civil Statutes of Texas, 1925, providing for personal notice to the owner, in addition to the notice as now provided in said Article, and declaring an emergency."

Read and referred to Committee on Civil Jurisprudence.

By Senators Beck, Purl, Moore, DeBerry and Hornsby:

S. B. No. 80, A bill to be entitled "An Act amending Article 367 of the Texas Penal Code, relating to demanding and collecting illegal fees; and declaring an emergency."

Read and referred to Committee on Criminal Jurisprudence.

By Senators Beck, Purl, Moore, DeBerry and Hornsby:

S. B. No. 81, A bill to be entitled "An Act amending Article 1027 of the Code of Criminal Procedure of Texas as amended by Acts of the Forty-second Legislature, 1931, Regular Session, page 338, chapter 205, section 1, relating to repayment of moneys to the State by officers; and declaring an emergency."

Read and referred to Committee on Criminal Jurisprudence.

By Senators Beck, Purl, Moore, DeBerry and Hornsby:

S. B. No. 82, A bill to be entitled "An Act amending Article 348 of the Code of Criminal Procedure, relating to summoning a grand jury; and declaring an emergency."

Read and referred to Committee on Criminal Jurisprudence.

By Senators Beck, Purl, Moore, DeBerry and Hornsby:

S. B. No. 83, A bill to be entitled "An Act amending Section 5, of Article 1029 of the Texas Code of Criminal Procedure, relating to fees of sheriff or constable; and declaring an emergency."

Read and referred to Committee on Criminal Jurisprudence.

By Senators Beck, Purl, Moore, DeBerry and Hornsby:

S. B. No. 84, A bill to be entitled "An Act relating to fees of sheriff or constable; amending Article 1030, section 1, Texas Code of Criminal Procedure."

Read and referred to Committee on Criminal Jurisprudence.

By Senators Beck, Purl, Moore, DeBerry and Hornsby:

S. B. No. 85, A bill to be entitled "An Act amending Article 1020, Texas Code of Criminal Procedure, relating to testimony in examining courts; providing for filing of such testimony with district clerks; providing for payment of fees to district clerks and county attorneys in examining trials; and declaring an emergency."

Read and referred to Committee on Criminal Jurisprudence.

By Senators Beck, Purl, Moore, DeBerry and Hornsby:

S. B. No. 86, A bill to be entitled "An Act amending Article 26, Chapter 2, of the Code of Criminal Procedure of Texas, relating to duties of county attorneys; providing for fees of such duties; and declaring an emergency."

Read and referred to Committee on Criminal Jurisprudence.

By Senators Beck, Purl, Moore, DeBerry and Hornsby:

S. B. No. 87, A bill to be entitled "An Act relating to the prosecution and removal of officials; amending Article 5986, Revised Civil Statutes of Texas, 1925; and declaring an emergency."

Read and referred to Committee on Criminal Jurisprudence.

By Senators Beck, Purl, Moore, DeBerry and Hornsby:

S. B. No. 88, A bill to be entitled "An Act amending Chapter 91, page 222, section 4 of the Acts of the 41st Legislature, 1929, First Called Session; relating to additional duties of the State Auditor; and declaring an emergency."

Read and referred to Committee on Civil Jurisprudence.

By Senator Fellbaum:

S. B. No. 89, A bill to be entitled "An Act regulating fees of office for each county officer, precinct officer, district clerk and district attorney,

receiving fees of office for his services; providing for the payment of the premium on officer's bond, necessary expenses, deputies and assistants as allowed and approved by the County Commissioners Court; providing the amounts to be retained by said officers and the amounts to be paid into the county treasury; providing the maximum amount that any officer may receive; providing requirements, time and manner of allowing compensation for ex-officio services, etc., and declaring an emergency."

Read and referred to Committee on Finance.

By Senator Regan:

S. B. No. 90, A bill to be entitled "An Act creating the office of County Purchasing Agent in all counties in this State having a population of more than 100,000 inhabitants and less than 150,000 inhabitants according to the last preceding Federal census, and wherein is situated an incorporated city of more than 100,000 inhabitants according to the last preceding Federal census, providing for the appointment of such agent, prescribing his duties and fixing his compensation, making it unlawful for any person, firm or corporation to purchase any supplies, materials and equipment for or to contract for any repairs to property used by such county or any subdivision, officer, or employee thereof, except such purchasing agent, and making it unlawful for the county auditor to draw or for the county treasurer to honor any county warrants drawn for such supplies, materials, repairs and equipment unless the same shall have been purchased or contracted for by such agent, providing that such agent shall annually file an inventory of all property of such county with the Commissioners' Court of such county, and prescribing the duties of the County Auditor with reference to such inventory, providing for the transfer by such agent of county supplies, materials, and equipment from a subdivision, department, officer, or employee of such county to other subdivisions, departments, officers and employees of said county, prescribing a penalty for the violation of this act and declaring an emergency."

Read and referred to Committee on Counties and County Boundaries

By Senator Woodul:

S. B. No. 91, A bill to be entitled "An Act to amend Article 7084, Chapter 3, Title 122 of the Revised Civil Statutes of Texas, 1925, relating to franchise tax of corporations, so that hereafter said Article shall not apply to any bonds and notes of any corporation, which are secured by a lien upon real estate in the State of Texas."

Read and referred to Committee on State Affairs.

By Senator Small:

S. B. No. 92, A bill to be entitled "An Act amending Article 6008 of the Revised Civil Statutes of 1925, as amended by Section 2, Chapter 26, of the Acts of the Forty-second Legislature, First Called Session, prohibiting the waste of gas by escape and requiring the confinement thereof under the terms and conditions of said Article; providing for the utilization of gas containing hydrogen sulphide or other foreign substance, for purposes other than light or fuel, to the extent of 25 per cent of the open flow of the wells producing such gas; giving the Commission authority to permit such utilization in excess of 25 per cent of the open flow after hearing; and, providing that such utilization shall not constitute waste; affixing penalty for violation thereof; repealing all laws in conflict therewith, and declaring an emergency."

Read and referred to Committee on State Affairs.

By Senator Parr:

S. B. No. 93, A bill to be entitled "An Act to amend Article 2956, as amended by Chapter 105, Acts of the Regular Session, Forty-second Legislature, providing for absentee voting in all elections, etc., and declaring an emergency."

Read and referred to Committee on Privileges and Elections.

By Senators Greer and Pace:

S. B. No. 94, A bill to be entitled "An Act appropriating four million dollars (\$4,000,000) per year, or so much thereof as may be necessary, for the next two fiscal years for the purpose of promoting the public school interests of rural schools and equalizing the school opportunities afforded by the State to all children of scholastic age living in small and financially weak districts, attaching

conditions, regulations and limitations relative thereto, authorizing aid to such schools in accordance with the conditions herein specified; providing for the maintenance of all rural schools which meet the requirements of this Act a term of a certain length; providing assistance for rural schools that will afford instruction and demonstration in home and farm vocations; providing assistance in the formation and maintenance of rural high school districts according to a county-wide plan; providing for the use of an amount not to exceed a certain sum for the payment each year of the biennium of high school tuition of rural school pupils according to the provisions of Chapter 181 of the General Laws of the Fortieth Legislature, Regular Session, as amended by Senate Bill No. 10 passed at the First Called Session of the Forty-first Legislature and further amended by Senate Bill No. 41 (Chapter 20), passed at the First Called Session of the Forty-second Legislature; providing for the payment of transportation aid under certain conditions; providing for the payment of salaries and expenses of county school supervisors; providing for penalties for violation of any of the provisions of this Act; providing for the administration of the funds appropriated herein by the State Board of Education and the State Superintendent of Public Instruction; providing for the manner of payment and disbursement of all monies granted under the provision of this Act; enacting other provisions necessary and incidental to the provisions of this Act; and declaring an emergency."

Read and referred to Committee on Finance.

By Senator Neal:

S. J. R. No. 4, Proposing amendments to Sections 4, 22 and 23 of Article 4 of the Constitution of the State of Texas by providing that the terms of office for the Governor, Attorney General, Comptroller of Public Accounts, Treasurer and Commissioner of the General Land Office shall each be limited to only one term of four years, and that each said officer shall thereafter be ineligible to succeed himself, providing for the submission of same to the qualified electors of the State of Texas as required by the Constitution, and providing for the necessary proclamation and making an appro-

priation to defray the expenses for the publication of the Governor's proclamation and for the election.

Read and referred to Committee on Constitutional Amendments.

Senator Excused.

On motion of Senator Purl, Senator Woodward was excused for the week on account of important business.

Free Conference Committee Report.

Senator Woodul sent up the following Free Conference Committee report:

Committee Room,

Austin, Texas, Jan. 23, 1933.

Hon. Edgar E. Witt, President of the Senate.

Hon. Coke Stevenson, Speaker of the House.

Sirs: We, your Free Conference Committee appointed to adjust the differences between the Senate and the House on

S. B. No. 1, A bill to be entitled "An Act providing for the ordering of special elections to fill public offices and for fixing the time for the holding thereof; providing that special elections shall be ordered to fill vacancies in certain public offices; providing that special elections be ordered to elect a person to fill the unexpired term and a person to fill the succeeding term in certain offices where the incumbent is re-elected and thereafter dies, resigns or where for any other reason a vacancy occurs in the unexpired term, and no person is legally entitled to fill the term to which the former officer was elected to succeed himself; etc; and declaring an emergency."

Have had the same under consideration and we wish to report it back to you with the recommendation that it do not pass, but that the following Free Conference Committee substitute do pass in lieu thereof:

A BILL

To Be Entitled

An Act providing for the ordering of special elections to fill public offices and for fixing the time for the holding thereof; providing that special elections shall be ordered to fill vacancies in certain public offices; providing that spe-

cial elections be ordered to elect a person to fill the unexpired term and a person to fill the succeeding term in certain offices where the incumbent is re-elected and thereafter dies, resigns or where for any other reason a vacancy occurs in the unexpired term, and no person is legally entitled to fill the term to which the former officer was elected to succeed himself; providing that an election shall be ordered upon acceptance or resignation of the incumbent of certain offices where he tenders a resignation effective at a future date, to select a successor to the incumbent for the unexpired term; providing that where the officer-elect of certain offices dies before qualifying or becomes ineligible to qualify for the office to which he was elected, an election to select a successor to the incumbent shall immediately be ordered; designating the Governor as the proper officer to receive and accept resignations of public officers where no other officer is authorized to receive same; providing for the furnishing by tax collectors within a certain specified time of certified lists of citizens in each precinct who have paid their poll taxes or have received their certificates of exemption; repealing Article 2952, Revised Civil Statutes of 1925; validating elections heretofore held or orders of election heretofore made where same would have been authorized under this Act; providing that if any section, paragraph or provision hereof be held unconstitutional or invalid the remaining portions of this Act shall not be affected but shall remain in force and effect; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. Where special elections are authorized by this Act, the officer authorized by law to order elections shall make such order, fixing the time of the election not less than twenty nor more than ninety days after the first public notice of such order.

Sec. 2. Where vacancies which are to be filled by election occur in a civil office, an election shall immediately be ordered to fill the unexpired term.

Sec. 3. Where an officer, holding an office the vacancy of which is to be filled by election, is re-elected to a term of office succeeding that of which he is the incumbent, and where after the re-election of said officer, by reason of the death or resignation of the officer or otherwise, there is no person legally entitled to fill the office for the unexpired term or to fill the office for the succeeding term to which the former officer was elected to succeed himself, an election shall be immediately ordered to elect a person to fill the unexpired term in said office and to elect a person to fill the term of office succeeding the unexpired term.

Sec. 4. When the incumbent of an office, the vacancy of which is to be filled by election, tenders to the officer authorized by law to receive same a written resignation effective at a future date, an election shall be ordered immediately after acceptance of the resignation to elect a successor to the incumbent to fill the term of office unexpired from and after the effective date of the resignation.

Sec. 5. When an officer-elect to an office a vacancy in which must be filled by election, tenders to the officer authorized by law to receive the resignation of an incumbent of the office to which said officer-elect was elected, a declaration in writing of his intention not to qualify for the office to which he was elected, an election shall be ordered immediately upon receipt of said written declaration to elect a successor to the incumbent of the office.

Sec. 6. When the officer-elect to an office which must be filled by election dies or becomes ineligible to qualify for the office to which he was elected, the proper officer shall immediately order an election to elect a successor to the incumbent of the office.

Sec. 7. Where no officer is otherwise authorized by law to receive and accept the resignation of an officer, the Governor is hereby designated as the officer to do so, and he is hereby empowered and authorized to receive and accept the resignation of all such officers.

Sec. 8. Whenever a special election or special primary as herein provided or otherwise provided by law shall be called between February

1st and April 1st, the tax collectors of the counties in which such election or primary is to be held shall make up and deliver to the board charged with the duty of furnishing election supplies separate certified lists of the citizens in each precinct who have paid their poll tax or have received their certificates of exemption in the form now provided by law, on or before February 20th.

Sec. 9. Article 2952, Revised Civil Statutes, 1925, is hereby expressly repealed.

Sec. 10. All elections heretofore held or orders of elections heretofore made are hereby validated where same would have been authorized under the provisions of this Act.

Sec. 11. If any section, paragraph, or provision of this Act be held or declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining sections, paragraphs, or provisions of this Act, but the same shall remain in full force and effect.

Sec. 12. The fact that existing laws do not adequately provide for the continuous representation of the people of this State, and in view of the fact that there are now existent situations whereby the people of this State will soon be deprived of the representation to which they are entitled unless existing laws are changed, create an emergency and an imperative public necessity requiring that the Constitutional Rule that bills be read on three several days in each House be, and the same is hereby suspended, and this Act shall take effect and be in force from the date of its passage, and it is so enacted.

Respectfully submitted,

WOODUL,
MARTIN,
PARR,
BLACKERT,
MOORE,

On the part of the Senate.

MORSE,
WALKER,
SHULTS,
WELLS,
WEST,

On the part of the House.

Read and adopted by the following vote:

Yeas—26.

Beck.	Murphy.
Blackert.	Neal.
Collie.	Pace.
Cousins.	Parr.
DeBerry.	Patton.
Duggan.	Poage.
Fellbaum.	Redditt.
Greer.	Regan.
Holbrook.	Russek.
Hopkins.	Sanderford.
Hornsby.	Stone.
Martin.	Woodruff.
Moore.	Woodul.

Nays—2.

Purl.	Small.
-------	--------

Present—Not Voting.

Rawlings.

Absent—Excused.

Oneal. Woodward.

Senate Simple Resolution No. 23.

Senator Hornsby sent up the following resolution:

Whereas, The Inaugural Committee appointed by the Speaker on the part of the House, and the Committee appointed by the Lieutenant Governor on the part of the Senate, turned the management and control of the physical arrangements of the recent inauguration over to the Sergeant-at-Arms of the House, Joe White, and the Sergeant-at-Arms of the Senate, A. W. Holt; and,

Whereas, There was appropriated for the purpose of covering the expenses incident to said inauguration, the sum of five hundred dollars (\$500.00); and

Whereas, The Sergeants-at-Arms of the House and of the Senate made such arrangements at a total cost of \$133.12, which was expended as follows: Platform, \$81.75; loud speakers, \$16.99; cloth for decorations, \$9.38; hauling chairs from University, \$10.00; piano rent, \$15.00; making a total of \$133.12; and

Whereas, Such arrangements were adequate and attractive and were furnished with a minimum of expense, being the least amount expended for that purpose in many years; therefore be it

Resolved by the Senate, That we express our appreciation and approval of the arrangements made by the Sergeants-at-Arms and compliment

them on the small amount expended therefor.

HORNSBY.

Read and adopted.

Messages From the House.

Hall of the House of Representatives,
Austin, Texas, Jan. 23, 1933.
Hon. Edgar E. Witt, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following resolution:

H. C. R. No. 8, Requesting the Railroad Commission of Texas and the Attorney General to protest to the Interstate Commerce Commission against the abandonment of the San Antonio, Uvalde & Gulf Railroad Company of Texas.

The House has adopted Conference Committee Report on S. B. No. 1 by a vote of 117 yeas and 0 nays.

I am directed by the House to inform the Senate that the House has passed the following bill:

H. B. No. 18, A bill to be entitled "An Act amending Article 6548, Revised Civil Statutes, 1925, so as to authorize the substitution in whole or in part, of motor bus lines for street and interurban railways by companies authorized to operate a street, or suburban, or interurban railway, authorizing such companies to operate motor busses for the carrying of passengers for hire, and providing that such substitution of motor busses shall not impair any of the corporate powers of such corporations heretofore organized."

Respectfully submitted,

LOUISE SNOW PHINNEY,
Chief Clerk, House of Representatives.

S. C. R. No. 6.

Senator Hopkins sent up the following resolution:

Whereas, There now exists in the State of Texas financial distress and uncertainty to a degree heretofore unknown to our people, and as a result thereof the taxpayers of our State face the future with fear and tribulation, knowing not what the future holds for them, looking askance at probable action of this Legislature, trusting that such action may be taken by it, and taken immediately, as will correct or tend to correct and alleviate the uncertain financial conditions existing; and,

Whereas, The general field of tax relief, tax reduction and general appropriation of moneys in the operation of our State government are jointly and intimately related, each contingent and dependent upon the other; and,

Whereas, It has been generally stated to the people of Texas that tax reductions and scaling down of appropriations shall be the first or prime considerations of this Legislature, as representatives of the people, the taxpayers and citizens of Texas are anticipating and expecting that such relief be given to them and immediately; and,

Whereas, The amounts of money heretofore collected by the tax gatherer and spent by the State, are now out of proportion to the financial conditions of our people and must be reduced; and,

Whereas, The National platform of the Democratic party provides for and binds it to the unswerving policy of effecting "a saving of not less than 25 per cent in the cost of Federal Government" and the State platform of the same party, adopted at Lubbock in State Convention assembled, reiterated the same policy and stipulated in plain language that there should be a reduction in taxes and appropriations thereon of not less than 25 per cent; and,

Whereas, There was appropriated by the Forty-second Legislature for the maintenance of our State Government the sum of \$56,639,931.47, and there will be received and expended by the State of Texas from all sources the enormous sum of approximately \$203,000,000 during the period beginning September 1, 1931, and ending August 31, 1933; and,

Whereas, Deficiencies aggregating in excess of \$13,000,000 will exist in the General Fund, School Fund and Pension Fund at August 31, 1933; and,

Whereas, In conformity with the deficits existing, the needs of the people, the financial conditions of the times and the political pledges of the Democratic party, the relief can best and more quickly be obtained by prompt enactment of the appropriation bills after action is had by the Finance Committee of the Senate and the Appropriations Committee of the House; now, therefore, be it

Resolved By the Senate of Texas, the House of Representatives concur-

ring, That for the Regular Session only, of the Forty-third Legislature, the joint rules of the said two houses be and they are hereby amended by adding thereto a new rule, reading as follows:

"Rule 25. For and during the term of the Forty-third Legislature only, it shall be mandatory upon the Finance Committee of the Senate and the Appropriations Committee of the House and the presiding officer of each of said respective bodies to report out to each of said two houses and begin consideration of all general appropriation bills for the biennium ending August 31, 1935, on or before March 10, 1933."

HOPKINS.

The resolution was read.

Senator Woodruff sent up the following amendment:

Amend Senate Concurrent Resolution No. 6 by changing the date of March 10th, 1933 to April 10th, 1933, in the last paragraph of the resolution.

WOODRUFF.

The amendment was read.

Senator Hopkins moved to lay the resolution on the table subject to call.

Senator Purl moved as a substitute that the resolution be referred to the Committee on Rules.

Senator Russek moved to table the substitute motion. The motion to table prevailed by the following vote:

Yeas—21.

Blackert.	Pace.
Collie.	Parr.
Cousins.	Patton.
DeBerry.	Rawlins.
Fellbaum.	Redditt.
Holbrook.	Regan.
Hopkins.	Russek.
Hornsby.	Sanderford.
Martin.	Stone.
Murphy.	Woodruff.
Neal.	

Nays—7.

Beck.	Purl.
Greer.	Small.
Moore.	Woodul.
Poage.	

Absent.

Duggan.

Absent—Excused.

Oneal.

Woodward.

The motion to lay the resolution on the table subject to call prevailed.

Executive Session Postponed.

By unanimous consent, the executive session set for 11 o'clock a. m. today was postponed until 3 o'clock p. m. today.

Opinion From Attorney General.

The Chair laid before the Senate the following communication, which, on motion of Senator Rawlings, was ordered printed in the Journal.

Office, Attorney General,
Austin, Texas, Jan. 21, 1933.

Honorable Will M. Martin, Chairman, Senate Committee on Nominations of the Governor, Forty-second Legislature, Austin, Texas.

Dear Sir: Your inquiry of the nineteenth instant reads as follows:

"Before Governor Sterling left the office of Governor, on or about January 11th, 1933, he sent a message to the Senate advising the Senate of his appointment of three members to the State Board of Education. Before the Senate acted upon these appointments Governor Ferguson sent the Senate a message requesting that she be permitted to withdraw these three names.

"I have been requested as chairman of the committee on Governor's Nominations to call upon you today for an opinion as to whether or not Governor Ferguson has a legal right to withdraw these three names either with or without the consent of the Senate.

"The foregoing history with reference to these appointments is shown in the Senate Journal."

In logical sequence, we will determine: (1) Whether Governor Miriam A. Ferguson has the legal right to withdraw from the consideration of the Senate, without its consent, the names mentioned; and (2) if she has not that power, whether she has the legal right to withdraw such names with the consent of the Senate.

Under date of January 16, 1933, upon request of the Senate, I advised that the terms of the Honorable B. F. Tisinger, C. H. Chernosky, and Tom Garrard, as members of the State Board of Education, expired on January 1, 1933; and that the retiring Governor, Ross S. Sterling, had the legal right to make

appointments to fill the three regular terms on said Board which began on January 1, 1933. It necessarily follows from that opinion that the reappointments of Tisinger, Chernosky, and Garrard were valid, insofar as a Governor could make them so; and that those appointments were properly before the Senate for its consideration before Her Excellency, Miriam A. Ferguson, succeeded to the Governorship on January 17, 1933.

All constitutional and statutory provisions for the State Board of Education and the manner of appointment of its members are set forth in the opinion of the 16th instant, which is found printed in the Senate Journal of January 17, 1933. (Senate Jour. 43rd Leg., Reg. Ses. p. 72.) Without here repeating all of those provisions, it suffices to say that the Legislature, acting under proper constitutional grant of authority (Constitution, Art. VII, Secs. 8 and 16), has provided that the members of the State Board of Education shall be appointed by the Governor, with the advice and consent of the Senate. (Chap. 10, Gen. Laws, 2nd Called Ses. 41st Leg. 1929.)

It will be noted that the powers of the Governor and the Senate are co-equal, as respects appointments of this nature. The Governor alone may nominate, and in the making of the nominations the Governor needs no senatorial consent. Senatorial consent is required for the appointments, after the nominees for membership on the Board are first selected. (See *Myers vs. United States*, 272 U. S. 52, at 265; 71 Law. Ed. 160, at 228.) When the Governor selects his nominees for membership he appoints these nominees, with the consent of the Senate. In the instant case the Governor has both nominated and appointed, and the names of the three appointees under consideration have been referred to the Senate Committee on Governor's Nominations. Sen. Jour. Reg. Ses. 43rd Leg. p. 20.

All of this was done before the attempted withdrawal of the gubernatorial appointments from senatorial consideration. It is my opinion that this matter had passed from the hands of the Governor and into the control of the Senate before the recall was attempted. *Barrett vs.*

Duff, 114 Kan. 220, 217 Pac. 918. It is immaterial that there was a change in Governors after the appointments were sent to the Senate and before the recall was attempted. The executive power vested in the Governor is continuous and knows neither names, persons, nor terms of office. It began with the Revolution and establishment of an independent government for Texas, and will continue so long as our Constitution endures. *Barrett vs. Duff*, 114 Kan. 220, 217 Pac. 918; *State vs. Matassarini*, 114 Kan. 224, 217 Pac. 930; *People vs. Shawner*, 30 Wyo. 366, 222 Pac. 11. The power of appointment of the members of the State Board of Education began with the amendments to the Constitution adopted in 1928, and the Legislative Enabling Act of 1929, *supra*. It has extended in unbroken line since that date, and will exist so long as these constitutional and statutory provisions remain unchanged.

After appointment by the Governor neither the appointing Governor nor his successor has any power over the appointment, in the absence of senatorial acquiescence. *Barrett vs. Duff*, *supra*. The mere fact that the appointing Governor has been succeeded in office by another does not deprive the Senate of its confirming power over appointments made by the retiring Governor. *People vs. Shawner*, *supra*.

To hold that the Governor could withdraw these nominations against the will of the Senate would be to destroy the co-equal power of the Governor and the Senate over such nominations. Such a rule would reduce the Senate to the status of a mere ministerial body, would ignore its co-equal power and responsibility, would cripple its appointive powers, and would be destructive of our traditionally weighted American governmental system of checks and balances.

While I have cited other cases in this opinion, I regard this question as settled by the great Chief Justice in the classic case of *Marbury vs. Madison*, 1 Cranch 137, 2 Law. Ed. 60. That case has been regarded for more than a hundred years as the leading and most important ever decided on the question under consideration. In discussing the power

of the executive over appointments, Chief Justice Marshall said:

"The power of nominating to the Senate, and the power of appointing the person nominated, are political powers, to be exercised by the President according to his own discretion. When he has made an appointment, he has exercised his whole power, and his discretion has been completely applied to the case. If, by law, the officer be removable at the will of the President, then a new appointment may be immediately made, and the rights of the officer are terminated. But as a fact which has existed cannot be made never to have existed, the appointment cannot be annihilated; and consequently, if the officer is by law not removable at the will of the President, the rights he has acquired are protected by the law, and are not resumable by the President. They cannot be extinguished by executive authority, and he has the privilege of asserting them in like manner as if they had been derived from any other source."

The first point covered in your inquiry is, therefore, settled by this quotation. The second inquiry is likewise governed by the same case. Under the terms of the Act creating the State Board of Education, senatorial confirmation is required before the appointments become final. Until an appointment becomes final so that the appointee is legally entitled to the office, it is subject to revocation by the appointing power. *Marbury vs. Madison*, 1 Cranch 137, 2 Law. Ed. 60; *Schults vs. City of Jefferson*, 273 S. W. 170 (Kan. City Ct. of Apps.); *Board of Education of Boyle County vs. McChesney*, 235 Ky. 692, 32 S. W. (2d) 26.

Since the appointments of Messrs. Tisinger, Chernosky and Garrard have not been made final by confirmation, the appointing power has the right to recall their appointment. In this case the appointive power is vested jointly in the Governor and the Senate; and, if the Senate gives its consent to the withdrawal, it thereby joins in the recall and the names of those submitted may unquestionably be withdrawn.

You are, therefore, respectfully advised that Governor Ferguson has not the legal right to withdraw the names of the three appointees with-

out the consent of the Senate. It necessarily follows that she may do so with the consent of the Senate.

Yours very truly,

JAMES V. ALLRED,
Attorney General of Texas.

Senator Woodruff sent up the following written motion:

I move that the Committee on Governor's Nominations be instructed to return instanter without recommendation the question of the request of the Governor to withdraw the names of the appointees to the State Board of Education.

Senator Martin raised the point of order that this matter had been referred to the Committee on Governor's Nominations and the report of that committee must be made in executive session.

The Chair, President Pro Tem. Walter Woodul, overruled the point of order, holding that the report on this particular subject must be made to the Senate in open session.

Senator Parr raised the point of order that the committee had already acted on the request of the Governor and was ready to report to the Senate.

The Chair, President Pro Tem. Walter Woodul, held that the report had not been received and that as long as the committee report had not been received, it was in order for the Senate to instruct the committee to report instanter or at any other time.

Senator Martin offered to send up the report.

Senator Woodruff raised the point of order that this was not a privileged committee report and could not be sent up while his motion was pending.

The Chair, President Pro Tem. Walter Woodul, held that by a two-thirds affirmative vote, the Senate could permit the report to be sent up.

Senator Hornsby raised the point of order that it was out of order to instruct the committee to report when it was out of order for the report to be sent up.

The Chair, President Pro Tem. Walter Woodul, overruled the point of order.

Recess.

Senator Cousins moved to recess until 3 o'clock p. m.

Senator Woodruff moved to recess until 2 o'clock p. m.

The motion to recess until 3 o'clock prevailed by the following vote:

Yeas—18.

Blackert.	Parr.
Cousins.	Patton.
DeBerry.	Rawlings.
Duggan.	Redditt.
Greer.	Regan.
Hopkins.	Russek.
Martin.	Sanderford.
Neal.	Small.
Pace.	Stone.

Nays—11.

Beck.	Murphy.
Collie.	Poage.
Fellbaum.	Purl.
Holbrook.	Woodruff.
Hornsby.	Woodul.
Moore.	

Absent—Excused.

Oneal.	Woodward.
--------	-----------

At 12:06 o'clock p. m., the Senate recessed.

After Recess.

The Senate met at 3 o'clock p. m., pursuant to recess, and was called to order by President Pro Tem. Walter Woodul.

Motion to Instruct Committee.

The Chair announced that the question recurred upon the motion to instruct the Committee on Governor's Nominations.

Senator DeBerry raised the point of order that the time for the executive session had arrived.

The Chair, President Pro Tem. Walter Woodul, sustained the point of order.

Senator Moore inquired whether the Chair held that the setting of an executive session at a given time made the executive session a special order at that time.

The Chair, President Pro Tem. Walter Woodul, replied that such was his holding.

Senator Woodruff moved that the time for the executive session be postponed one hour.

Senator DeBerry raised the point of order that the motion was not properly stated and must include a

motion to suspend the regular order of business and postpone the time of the executive session, because the hour for the executive session having arrived, the executive session was now the regular order of business and must be suspended by a two-thirds vote.

The Chair, President Pro Tem. Walter Woodul, sustained the point of order.

Senator Woodruff moved to suspend the regular order of business and to postpone the time of the executive session one hour.

Before a vote was taken, however, Senator Woodruff withdrew his motion.

Executive Session.

At 3:45 o'clock p. m. the Chair announced that the hour for the executive session had arrived. The Chamber was cleared and the doors were locked.

After Executive Session.

At the conclusion of the executive session, the Secretary of the Senate informed the Journal Clerk that the following action had been taken:

Committee Room,

Austin, Texas, Jan. 23, 1933.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Governor's Nominations, to whom was referred the following nomination of the Governor, beg leave to report that we have considered the appointee recommended by the Governor, and I am instructed to recommend that the following named person for the following named position be in all things not confirmed:

Honorable J. W. Fitzgerald, as Judge of the Special District Court of Smith and Upshur Counties.

MARTIN, Chairman.

Adopted.

BOB BARKER,
Secretary of the Senate.

The following proceedings of the executive session were ordered printed in the Journal by unanimous consent.

Regarding the request of the Governor to withdraw three nominations for the Board of Education, Senator Purl sent up the following written point of order:

I raise the point of order that the question is not properly before an executive session of the Senate of Texas at this Forty-third Session.

PURL.

Read and sustained by the following vote:

Yeas—17.

Beck.	Oneal.
Blackert.	Poage.
Collie.	Purl.
Cousins.	Rawlings.
Duggan.	Regan.
Greer.	Small.
Holbrook.	Woodruff.
Moore.	Woodul.
Murphy.	

Nays—13.

DeBerry.	Parr.
Fellbaum.	Patton.
Hopkins.	Redditt.
Hornsby.	Russek.
Martin.	Sanderford.
Neal.	Stone.
Pace.	

Absent—Excused.

Woodward.

Message From the Governor.

Executive Department,

Austin, Texas, Jan. 19, 1933.

To the Texas State Senate:

I ask your advice and consent to the appointment as emergency notaries public the following:

(See immediately following last day's Journal.)

Respectfully submitted,

MIRIAM A. FERGUSON,

Governor.

Read and referred to Committee on Governor's Nominations.

Message From the House.

Hall of the House of Representatives,
Austin, Texas, Jan. 23, 1933.

Hon. Edgar E. Witt, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following resolution:

H. C. R. No. 11, With reference to the naming of the proposed service highway from the museum of the Panhandle-Plains Historical Society at Canyon, Texas, to the Goodnight Ranch in memory of the late Charles Goodnight.

Respectfully submitted,

LOUISE SNOW PHINNEY,
Chief Clerk, House of Representatives.

Recess.

On motion of Senator Woodruff, the Senate, at 6:25 o'clock p. m., recessed until 10 o'clock tomorrow morning.

EIGHTH DAY (Continued).

Senate Chamber,
Austin, Texas,
January 24, 1933.

The Senate met at 10 o'clock a. m., pursuant to recess, and was called to order by Lieutenant Governor Edgar E. Witt.

Motion Withdrawn.

The question recurred upon the pending motion relative to instructing the Committee on Governor's Nominations to report the names of certain nominees back to the Senate without recommendations.

Senator Woodruff, the maker of the motion, withdrew the motion.

Motion to Refuse Governor's Request to Withdraw Nominations.

Senator Woodruff sent up the following written motion:

"I move that the Senate do not grant the request of the Governor to return to the Governor the names of C. H. Chernosky, Tom Garrard and Ben F. Tisinger heretofore nominated by the Governor and submitted to the Senate for confirmation as appointees to the State Board of Education."

WOODRUFF.

The motion was read.

House Bill Referred.

H. B. No. 18, read and referred to Committee on State Highways and Motor Traffic.

Message From the Governor.

Executive Department,
Austin, Texas, Jan. 24, 1933.
To the Texas State Senate:

I ask the advice and consent of the Senate in the appointment of Hon. Nat W. Brooks of Tyler, Texas, for the position of judge of the Special District Court for Smith and Upshur counties.

Respectfully submitted,
MIRIAM A FERGUSON,
Governor.

Read and referred to Committee on Governor's Nominations.

Executive Session Set.

On motion of Senator Pace, the Senate voted to go into executive session tomorrow morning at 11 o'clock for the purpose of considering Governor's nominations.

Point of Order.

Senator Holbrook sent up a committee report on S. B. No. 71.

Senator Rawlings raised the point of order that under the Rules this committee report was out of order at this period of the session.

Senator Holbrook withdrew the report.

Recess.

Senator Holbrook moved to recess until 2 o'clock p. m.

Senator Russek moved to recess until 2:30 o'clock p. m. The motion was lost.

The motion to recess until 2 o'clock p. m., prevailed and at 12:06 o'clock p. m., the Senate recessed.

After Recess.

The Senate met at 2 o'clock p. m., pursuant to recess, and was called to order by Lieutenant Governor Edgar E. Witt.

Advance Printing Ordered.

By request of Senators Greer, Poage, and Hornsby, advance printing of S. B. No. 106 was ordered.

Committee Changes.

The Chair announced the following changes in standing committees:

Added to Committee on Labor: Senators Small and Poage.

Senator Woodruff appointed as chairman of the Committee on Contingent Expense to succeed Senator Beck, resigned.

Motion to Refuse Governor's Request to Withdraw Nominations.

The question recurred upon the pending motion to refuse to grant the request of the Governor to withdraw certain nominations for membership on the Board of Education.

The motion prevailed by the following vote: